

EXHIBIT I

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 JANNIE PILGRIM, GIOVANNA HENSON, JESAN
5 SPENCER and BRENDA CURTIS,

6 Plaintiffs,
7 - against -

CASE NO.: 07CIV 6618

8 THE McGRAW-HILL COMPANIES, INC.,
9

10 Defendant.

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11 COPY

12 DEPOSITION OF BRETT MARSCHKE, taken by
13 Plaintiffs, pursuant to Notice on Friday, April 18,
14 2008, commencing at 9:39 a.m., before Chandra D.
15 Brown, a Registered Professional Reporter and Notary
16 Public within and for the State of New York.

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25

1 B. Marschke

2 MS. BLOOM: Object to the form of the
3 question to the extent that it mischaracterizes
4 the document.

5 It's only a piece of the document that
6 you're quoting from.

7 You can answer.

8 A Can you repeat the question?

9 Q Do you recall reading a reference in Ken
10 Caruso's PMP that made reference to pursuing
11 counseling Jesan Spencer out of the business?

12 MS. BLOOM: Object to the form of the
13 question.

14 You can answer.

15 A I remember that section of the PMP, yes.

16 That happened.

17 Q What do you remember about that section of
18 the PMP?

19 A I remember that section -- I remember the
20 section -- I remember the section talking about
21 Ken's ability to effectively manage the group, his
22 group, the H/R team, within BusinessWeek.

23 I remember the section of the document --
24 the commentary in that section of the document that
25 I gave Ken -- the feedback that I gave Ken was when

1 B. Marschke

2 we are counseling people on his team, that we need
3 to do it in a way that is fair, equitable, and that
4 that should be the case -- that should be the case,
5 even if we end up at an end point of counseling an
6 individual out of the business.

7 Again, that being an end point, not a
8 process.

9 Q What I'm still trying to understand, what
10 the meaning of the term "counseling" means.

11 Is that in and of itself a process?

12 A I think we counsel employees all the time
13 about a number of matters.

14 Q What does counseling mean?

15 MS. BLOOM: Objection. Asked and
16 answered.

17 You can answer it again.

18 MR. SOLOTOFF: I haven't gotten an answer
19 yet.

20 MS. BLOOM: I think you've gotten the
21 answer three or four times, but that's fine.

22 Go ahead and answer the question again.

23 A I don't understand the -- understand the
24 question.

25 Q I think you're defining counseling by

1 B. Marschke

2 using the word "counseling."

3 What I'm trying to get at is to understand
4 what the process of counseling means.

5 A Counseling would mean sitting down,
6 talking to an individual about strengths; talking to
7 an individual about weaknesses; talking about areas
8 where they can improve skills, where they can apply
9 skills that they already have.

10 Q Who does that counseling?

11 A I think managers throughout the business
12 are responsible -- have some responsibility for
13 doing that with employees.

14 MR. SOLOTOFF: Can I have this marked as
15 Marschke 1, please.

16 (Whereupon, the aforementioned 2005 PMP of
17 Kenneth Caruso Bates-stamped D07588 through
18 D07591, was marked as Marschke Exhibit 1 for
19 identification as of this date by the
20 reporter.)

21 BY MR. SOLOTOFF:

22 Q Mr. Marschke, I ask you to take a look at
23 what has been marked as Marschke No. 1.

24 MR. SOLOTOFF: A copy has been provided to
25 counsel.

1 B. Marschke

2 Q Can you identify this document?

3 A (Witness views document.)

4 This looks like Ken Caruso's review
5 for 2005.

6 Q First of all, do you recall signing this
7 document -- or signing it by computer form?

8 A I recall signing a -- I recall signing a
9 review for Ken in 2005.

10 I'm a bit confused why Sheila O'Neill's
11 name would be on it.

12 MS. BLOOM: We'll stipulate that this is
13 the 2005 review.

14 MR. SOLOTOFF: I would like to have this
15 marked as Marschke No. 2.

16 (Whereupon, the aforementioned 2005 PMP of
17 Kenneth Caruso Pages 684 through 702 (not
18 Bates-stamped) , was marked as Marschke Exhibit
19 2 for identification as of this date by the
20 reporter.)

21

22 BY MR. SOLOTOFF: ..

23 MS. BLOOM: We're going to object to the
24 use of the unredacted one in the deposition.

25 MR. SOLOTOFF: You've made your objection.

1 B. Marschke

2 MS. BLOOM: On the record.

3 I just want to make sure that there is no
4 ex parte calls to the court. If there is going
5 to be a call placed to the court, I want to be
6 present and on the phone.

7 MR. SOLOTOFF: We would never do that.

8 MS. BLOOM: Just making sure that there is
9 no misunderstanding and no miscommunication
10 about that.

11 MR. SOLOTOFF: Let's go back on the
12 record.

13 BY MR. SOLOTOFF:

14 Q Mr. Marschke, did you sign Ken Caruso's
15 2005 PMP?

16 A Yes, I believe I did.

17 Q Who else signed Ken Caruso's PMP?

18 Who else would have signed his 2005?

19 A It would have been Ken, and it would have
20 been -- myself, Ken, David Murphy.

21 Q Okay.

22 Generally, when do you sign the PMPs?

23 A Typically, they are completed within the
24 first quarter of the calendar year.

25 Q Is that within March or May, or April,

1 B. Marschke

2 May?

3 A It's typically within the March time
4 frame.

5 Q That would have been the case for Ken
6 Caruso's 2005 PMP, correct?

7 A Yes.

8 Q The 2005 PMP that you recall of Ken
9 Caruso, that was not prepared by Sheila O'Neill,
10 correct?

11 A No. No. it wasn't.

12 Q Okay.

13 She was not his -- he was not a
14 subordinate under her, correct?

15 A No. That is correct.

16 0 And he was a subordinate under you?

17 A That is correct

18 Q And Ken Caruso was your direct report?

19 A That is correct

20 Q And you were David Murphy's direct man.

21 A I reported to Pa

22 Q Okay

22 [REFERENCES](#) [CITED](#) [CROSS-REFERENCED](#)

24 *Journal* 2

1 B. Marschke

2 worked in corporate H/R. I'm in information and
3 media, and Sheila kind of sits off to the side in
4 corporate H/R.

5 Q Would there be any circumstances that you
6 could think of in which Sheila O'Neill would have
7 signed Ken Caruso's PMP?

8 MS. BLOOM: In 2005?

9 Q In 2005.

10 A No.

11 Q Okay.

12 Now, earlier you talked about counseling
13 an employee.

14 And is there a formal process in the
15 company; that is, a policy on what that means, to
16 counsel an employee?

17 A I don't believe that there is.

18 Q Is there a practice that has taken place
19 over the years that you were there, as to what
20 counseling an employee is, in terms of the process
21 of counseling?

22 A I don't believe that there is a standard
23 process. I mean, I think the notion of counseling
24 is -- I mean, as a concept, is understood.

25 Q Is that a term of art in the Human

1 B. Marschke

2 Resources field, the word "counseling" an employee?

3 MS. BLOOM: Objection to the form of the
4 question.

5 You can answer.

6 Q Do you understand what I'm saying?

7 A No.

8 Maybe you can phrase the question a
9 different way.

10 Q The word "counseling" an employee, is that
11 used in the company that you're at right now, that
12 phrase, "to counsel an employee"?

13 MS. BLOOM: Object to the form of the
14 question.

15 You can answer.

16 A We counsel employees at my current
17 company.

18 Q I'm trying to understand, counseling an
19 employee is not some very specific process that
20 McGraw-Hill created on its own?

21 A I think that's right.

22 Q Was there a training program on how to
23 counsel employees?

24 A Not that I'm aware of.

25 Q Okay.

1 B. Marschke

2 Is it possible that one human-resource
3 person might counsel employees differently than
4 another human-resource person?

5 A I think that that's -- I think that, you
6 know, there is a general concept of what appropriate
7 counseling is, but there is latitude, I think,
8 within that, depending upon the circumstances that
9 the practitioner is facing.

10 Q What I'm going to do is, I'm going to ask
11 you questions based on your understanding of
12 counseling and not based on someone else's practice
13 of counseling.

14 I think you described counseling as
15 working with the employee to gain their cooperation?

16 MS. BLOOM: Object to the form of the
17 question.

18 You can answer.

19 A No. It's not gaining cooperation. It's
20 identifying strengths and weaknesses, and looking
21 for ways to apply the strengths and to improve on
22 weaknesses.

23 Q Does that require --

24 A -- as part of the counseling process.

25 Q I'm sorry.

1 B. Marschke

2 A That's okay.

3 Q Does that require the employee's
4 cooperation, the person being counseled?

5 A I think it's certainly a healthier
6 dialogue if there is participation on the part of
7 the employee, but it's not, you know -- it can't be
8 a one-way conversation.

9 I think we would expect, kind of, managers
10 to take action to counsel people, whether the
11 employee was engaged or not.

12 Q What do you mean by "take action"?

13 A Just taking action to ensure that the
14 counseling is done.

Because the employee doesn't participate or is unwilling to participate doesn't relieve the manager from the responsibility to engage with the employee.

19 Q What if the employee does not agree to go
20 along with the recommendation to transfer the
21 employee from one part of the business to another
22 part of the business? -

23 MS. BLOOM: Objection to form of the
24 question and also mischaracterizes the
25 testimony.

1 B. Marschke

2 You can answer.

3 MR. SOLOTOFF: I didn't ask him this
4 question yet. Your recall is not very good.

5 MS. BLOOM: I think the record speaks for
6 itself, and if you haven't, then you haven't.
7 And -- but my objection is on the record.

8 As I said, the record will speak for
9 itself.

10 A Can you repeat the question?

11 Q If an employee does not voluntarily agree
12 to being transferred out of the department the
13 employee is in, what action is taken in that case?

14 MS. BLOOM: Object to the form of the
15 question.

16 Speculative. Mischaracterizes the record.

17 You can answer.

18 A I don't know if there is any action taken.

19 I think there should be a discussion as
20 to -- if there is an opportunity that presented
21 itself and the employee didn't want to avail
22 themselves, I think there is a discussion that
23 happens as to why.

24 Q Does counseling the employee include, in
25 your mind, transferring the employee against their

1 B. Marschke

2 will?

3 A No.

4 Q In other words, you seek to obtain a
5 mutual consensus as to what action has to be taken
6 in the counseling process?

7 A Repeat the question?

8 Q I'll rephrase it.

9 I assume you've counseled employees; am I
10 correct?

11 A Sure.

12 Q We're only talking about you.

13 A Right.

14 Q You try to gain the employee's consent; am
15 I correct?

16 A NO.

17 Q Do you try to gain the employee's
18 participation in the counseling process?

19 A Yes. I think it's a healthier dialogue if
20 we are communicating.

21 Q As you understand it, the counseling
22 process could include transferring an employee from
23 one position to another, whether they want to go or
24 not?

25 A I think that, at the end of the counseling

1 B. Marschke

2 process, it could result in -- there's any number of
3 things that could come out of a counseling process,
4 but one thing that could come out of it is a
5 transfer.

6 Q I'm trying to figure out whether that
7 transfer is one which is voluntary, as opposed to
8 one that is involuntary?

9 MS. BLOOM: Object to the form of the
10 question.

11 You can answer.

12 A I mean, typically, I think it would be
13 voluntary.

14 Q But it would be -- it would not be typical
15 if it was involuntary, correct?

16 MS. BLOOM: Object to the form of the
17 question.

18 You can answer.

19 A Certainly less common.

20 Q Do you know whether that has been done,
21 while you were supervisor and vice president of
22 Human Resources, under your jurisdiction?

23 A If what has been done?

24 Q An employee was involuntarily transferred
25 from one position to another, arising out of the

1 B. Marschke

2 counseling process?

3 A Not that I can recall.

4 Q Do you know whether Jesan Spencer was
5 voluntarily or involuntarily transferred from her
6 position at BusinessWeek to the position in BIG?

7 A I believe that that was voluntarily.

8 Q What gives you that belief?

9 A My recollection of Jesan's moving to work
10 with the BIG group, based on conversations I believe
11 that I had with Sheila O'Neill.

12 Q Anyone else?

13 A No. I think it was principally, you know,
14 principally Sheila and -- obviously, I had had a
15 conversation with the manager within BIG, the vice
16 president within BIG that, you know, Jesan was a
17 potential resource. And my recollection of my
18 conversations with him was that -- to the best of my
19 memory, that his view was that it was a voluntary
20 transfer.

21 Q Tell us about the conversation you had
22 with Sheila O'Neill concerning Jesan Spencer and her
23 transfer to BIG.

24 A My recollection was, we were aware that
25 Ken and Jesan were not working well together within

8 And I remember a conversation with her,
9 potentially identifying the BIG group as someplace
10 that -- you know, kind of given the need there, as a
11 potential place for Jesan to transfer to.

12 Q Well, where was this conversation?

13 A I can't be sure. You know, I seem to
14 remember it being -- it was, obviously, at our
15 building on Sixth Avenue. I'm not sure if it was on
16 my floor or Sheila's floor. I can't be certain.

17 Q Was anyone else present?

18 A I don't believe that there was.

19 Q What did you say to Sheila O'Neill in that
20 conversation?

21 A I think I just -- I think I expressed the
22 view that it might be an appropriate role for Jesan.

23 Q Were you aware of a plan to counsel Jesan
24 Spencer out of the business?

25 A No

1 B. Marschke

2 Q Wasn't that part of Ken Caruso's PMP?

3 A No. I think there is a -- once again,
4 there was no plan to counsel Jesan out of the
5 business or the company.

6 Q Was there a plan to counsel her out of the
7 department, from one department to the other?

8 A No. It was a possible outcome. I think
9 it was a possible outcome of Ken's ongoing
10 interaction with Jesan.

11 Q Was there a plan to counsel Jesan Spencer
12 period, just to counsel her?

13 A Yes. I think that -- a plan -- I think
14 there was the notion that we could make the team
15 more effective if Ken were to actively counsel
16 Jesan.

17 MR. SOLOTOFF: Can you please repeat the
18 answer.

21 BY MR. SOLOTOFF:

22 Q You said, "we could."

23 Who were you referring to as "we"?

24 A "We" was in the context of -- I'm sorry, I
25 don't remember saying --

1 B. Marschke

2 MR. SOLOTOFF: I just had it read back.

3 THE WITNESS: Can you read it back again,
4 please?

7 A I think "we" would mean Ken and I,
8 although the responsibility for the actual
9 counseling resided with Ken.

10 Q Do you know whether Ken counseled Jesan
11 Spencer in 2005 -- or rather, in 2006?

12 A In 2006. I believe he did, or at least
13 he, I believe, at the very least tried to.

14 Going back to our earlier discussion, I am
15 uncertain as to the level of interaction between the
16 two.

17 Q Okay.

18 Was there anyone else who was to
19 participate in counseling Jesan Spencer to leave her
20 position at BusinessWeek and go to BIG?

21 MS. BLOOM: Object to the form of the
22 question. Mischaracterizes the testimony.

23 You can answer.

24 MR. SOLOTOFF: I'll rephrase it.

25 Q Was Ken involved in the counseling process

1 B. Marschke

2 with Jesan Spencer to have her transferred from
3 BusinessWeek to BIG?

4 MS. BLOOM: Object to the form of the
5 question. Mischaracterizes the testimony.

6 You can answer.

7 A I don't remember. I don't remember Ken
8 being involved.

9 Q Do you know who was involved?

10 A It was certainly around -- the ultimate
11 decision to -- for Jesan to move from BusinessWeek
12 to BIG involved myself, Sheila O'Neill, Bill Harper,
13 and Jesan.

14 I think I'm fairly certain of that.

15 Whether or not Ken actively participated in that, I
16 just don't remember.

17 Q Okay.

18 Do you know whether Jesan Spencer was
19 counseled regarding her position at BusinessWeek?

20 A I believe that she was.

21 Q By whom?

22 A By Ken _____

23 Q Anyone else?

24 A I think that I -- over the period of the
25 end of '05 into '06, as a matter of the issues that

1 B. Marschke

2 Jesan brought forward, some of the problems that she
3 articulated, I know I spoke to her and Sheila
4 O'Neill also spoke to her.

5 Q Who made the decision, if you know, that
6 Jesan Spencer go from her position at -- from her
7 H/R business at BusinessWeek to an H/R position at
8 BIG?

9 A My recollection was, throughout the
10 process, Jesan and Sheila had talked about the
11 possibility of transferring out of BusinessWeek if a
12 position opened up.

13 I identified a need within BIG, and I
14 believe it was Sheila and Jesan that agreed that
15 that would be an appropriate spot.

16 Q How did you get the impression that Jesan
17 Spencer agreed that that was the appropriate spot?

18 A From talking with Sheila.

19 Q You didn't talk to Jesan Spencer, correct?

20 A I don't remember if I talked to Jesan. I
21 do remember talking to Sheila.

22 Obviously, I remember talking to Bill as
23 well.

24 Q To Bill Harper?

25 A Bill Harper.

1 B. Marschke

2 Q Can you please tell us when that
3 conversation was with Bill Harper?

4 A It's difficult to remember the specific
5 date, but I want to say first quarter of 2006;
6 March, April, maybe even May. I just don't quite
7 remember the date

8 I remember talking to Sheila. I seem to
9 remember Sheila saying that the conversation that --
10 that she had a conversation with Jesan that a
11 transfer would be something that we should consider

12 I knew Bill had had -- Bill had requested
13 of me some additional resources down at BIG, given
14 all of the work that he had.

I went and spoke to Bill, and I informed him that Jesan might be a possibility.

17 Q Did you speak with Ken Caruso about Jesan
18 Spencer going from BusinessWeek to BIG?

19 A I don't remember. I don't remember

20 I don't remember talking to Ken

21 Q Did Mr. Caruso express a desire that Jesan
22 Spencer be transferred from BusinessWeek to RICA

23 A No, he did not

24 Q Did he believe that her transfer would
25 suit Jesan, that that transfer from BusinessWeek to

1 B. Marschke

2 A No.

3 Q Did Sheila O'Neill describe to you her
4 conversations with Jesan Spencer and whether Jesan
5 Spencer was crying at any time?

6 MS. BLOOM: Object to the form of the
7 question.

8 You can answer.

9 A I don't remember.

10 Q After Jesan Spencer was transferred to
11 BIG, what were her job duties?

12 MS. BLOOM: Object to the form of the
13 question.

14 You can answer.

15 A When Jesan --

16 MR. SOLOTOFF: I just want to get this
17 correct.

18 Q You testified earlier she was transferred
19 to BIG; am I correct?

20 MS. BLOOM: Objection. He testified she
21 transferred.

22 Q Did Jesan Spencer transfer to BIG
23 voluntarily?

24 A Yes.

25 Q What gives you that information?

1 B. Marschke

2 A I believe that was a conversation that I
3 had had with Sheila O'Neill.

4 Q Sheila O'Neill did not tell you that Jesan
5 Spencer did not want to be transferred to BIG,
6 correct?

7 A Can you repeat the question?

8 Q Sheila O'Neill did not tell you that Jesan
9 Spencer did not want to be transferred to BIG?

10 A No. I don't remember having that
11 conversation with Sheila O'Neill.

12 Q But it is your impression that it was
13 Sheila O'Neill who told you that Jesan Spencer
14 wanted to be transferred to BIG?

15 A My recollection is that Jesan was open to
16 a transfer out of BusinessWeek into another role
17 given, you know, the dynamics between her and Ken.

18 And my understanding was that the BIG
19 assignment was one that was comparable and that
20 there was no issue around it.

21 Q The idea that there was no issue around
22 it, you got that from Sheila O'Neill, correct?

23 A That's my recollection.

24 Q What was Jesan Spencer's job duties at
25 BIG?

1 B. Marschke

2 A She was working as a generalist in a
3 similar capacity to what she was working at in
4 BusinessWeek.

5 The best of my recollection was that there
6 were a number of business -- a number of units
7 within BIG: Aviation Week, there was a technology
8 group, there may have been one other group as well.

9 It was a -- BIG was a newly formed group.
10 It was a pretty big business. And one of the women
11 who was working in the business, Toi Eaton, was
12 having just difficulty keeping up with everything
13 that was going on within BIG from an H/R
14 perspective.

15 So the role that Jesan would be playing
16 was one of generalist supporting those units working
17 with Toi.

18 Q Who is Toi Eaton?

19 A Toi Eaton is another H/R manager that
20 works in BIG reporting to Bill Harper.

21 Q Was Toi Eaton a director of Human
22 Resources? .. .

23 A I don't recall her title.

24 Q Was it Toi Eaton that supervised Jesan
25 Spencer?